No. 13,746

IN THE

United States Court of Appeals

For the Ninth Circuit

CHOW SING, by his guardian ad litem, Chow Yit Quong,

Appellant,

vs.

HERBERT BROWNELL, JR., Attorney General of the United States,

Appellee.

BRIEF FOR APPELLANT.

JACKSON & HERTOGS,
JOSEPH S. HERTOGS,
580 Washington Street, San Francisco 11, California,
Attorneys for Appellant.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

Subject Index

Table of Authorities Cited

Statutes

Rules

Texts

No. 13,746

IN THE

United States Court of Appeals

For the Ninth Circuit

CHOW SING, by his guardian ad litem, Chow Yit Quong,

Appellant,

vs.

HERBERT BROWNELL, JR., Attorney General of the United States,

Appellee.

BRIEF FOR APPELLANT.

JURISDICTIONAL STATEMENT.

The plaintiff-appellant filed in the United States District Court for the Northern District of California, Southern Division, a petition seeking a declaratory judgment of United States citizenship. Such action was commenced in accordance with the provisions of Section 503 of the Nationality Act of 1940 (54 Stat. 1171, 8 U.S.C.A. 903).

The District Court denied plaintiff's petition for a declaratory judgment (T. 24) and the plaintiff appealed (T. 25). Jurisdiction of this Court to review the District Court's decision is conferred by 28 U.S.C.A. 1291 and 1292.

STATUTES INVOLVED.

Section 1993 of the Revised Statutes of the United States, as amended by Section 1 of the Act of May 24, 1934 (48 Stat. 797) reads:

> "Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the right of citizenship shall not descend to any such child unless the citizen father or mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless, within six months after the child's twenty-first birthday, he or she shall take an oath of allegiance to the United States of America as prescribed by the Bureau of Naturalization."[1]

Section 503 of the Nationality Act of 1940 (8 U.S.C.A. 903) provides, in so far as pertinent here:

> "If any person who claims a right or privilege as a national of the United States is denied such

---

[1]The requirement that such children must reside in the United States for at least five years immediately previous to attaining the age of 18 years was retrospectively changed by the 1940 Act to provide that such residence must be between the ages of thirteen and twenty-one years (8 U.S.C. 601(g)(h)), and was again retrospectively changed by the 1952 Act to require that the child must come to the United States before attaining the age of twenty-three years and must be continuously physically present in the United States for five years between the ages of fourteen and twenty-eight years. (8 U.S.C. 1401(b)(c).)

right or privilege by any Department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person, regardless of whether he is within the United States or abroad, may institute an action against the head of such Department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such person claims a permanent residence for a judgment declaring him to be a National of the United States. * * *"[2]

STATEMENT OF THE CASE.

The appellant claims to be the lawful blood son of Chow Yit Quong. The defendant-appellee admits that the said Chow Yit Quong is and was at the time of the birth of the appellant a United States citizen.

The appellant arrived at the port of San Francisco, State of California, ex the SS "President Wilson" on August 23, 1950, seeking admission to the United States as a citizen thereof. A Board of Special Inquiry denied appellant's application for admission and recognition as a United States citizen. The appellate administrative authorities affirmed the Board's decision and excluded the appellant from the United States. Thereafter, this action was brought in the

---

[2]This statute has been repealed by the Immigration and Nationality Act of 1952 (8 U.S.C. sec. 1101, et seq.) which became effective December 24, 1952, but Section 405(a) of the latter Act continues the former statute in force and effect as to suits which were pending before the new Act became effective. (66 Stat. 280.)

Court below under the provisions of Section 503 of the Nationality Act of 1940 (8 U.S.C.A. 903) for the purpose of establishing the United States nationality of the appellant herein.

The case came to trial without a jury. The appellant, his father, Chow Yit Quong, his brother, Chow Sam, and one disinterested witness, testified concerning the claimed relationship. Under date of January 12, 1953 the lower Court concluded that the "evidence presented by plaintiff does not conform to the standards fixed in *Ly Shew v. Acheson,* No. 30,159 and No. 31,161, this day decided". Accordingly, judgment was entered for defendant. It is from this judgment that the appellant prosecutes this appeal.

The Court below made the following findings of fact and conclusions of law:

> "1. It is not true that the permanent residence and domicile of the person who claims to be plaintiff Chow Sing is within the Northern District of California, or in the United States of America.
>
> 2. The person who claims to be plaintiff Chow Sing has failed to introduce evidence or sufficient clarity to satisfy or convince this Court that Chow Yit Quong is the natural blood father of the person known as Chow Sing, or that the person who appeared before the Court claiming to be plaintiff Chow Sing is in truth and in fact Chow Sing.
>
> Conclusions of Law.
>
> The person appearing before the Court as plaintiff in this action is not entitled to the relief prayed for."

SPECIFICATIONS OF ERROR.

1. That the Findings of the District Court are clearly erroneous.

2. That the findings, conclusions and judgment of the District Court are unsupported by the evidence of record.

3. That the findings, conclusion and judgment of the District Court are contrary to the evidence of record.

4. That the District Court erred in finding that the plaintiff-appellant did not have a claim to permanent residence within the Northern District of California or in the United States of America.

5. That the District Court erred in concluding that the plaintiff-appellant, Chow Sing, is not a United States citizen.

ARGUMENT.

It was stipulated at the trial that Chow Yit Quong (alleged father of the appellant) is a United States citizen (T. 37). It was also stipulated that the said Chow Yit Quong first arrived in the United States at the port of San Francisco, California and was admitted as a citizen on June 30, 1923; that he departed from San Francisco on August 21, 1926; that he returned to the United States through the port of San Francisco on March 6, 1928; that he departed from San Francisco on August 12, 1932; that he returned to the United States through the port of Los Angeles,

California on March 11, 1939; that he departed from the port of San Francisco on November 17, 1939; that he returned to the United States through San Francisco on November 7, 1940; that he departed again on December 12, 1946 and returned on August 31, 1950 (T. 39).

The appellant claims birth at Canton City, China on August 23, 1934. He claims that his lawful blood father is the said Chow Yit Quong who was present in the courtroom at the time of trial in these proceedings.

Appellant contends that he is a citizen and national of the United States. Section 1993 of the United States Revised Statutes, as amended, which were in effect at the time of the birth of this appellant, specifically provided that a foreign-born child of a United States citizen acquired United States citizenship at birth. As this Court has previously stated, *Gung You v. Nagle,* 34 F.2d 848, 851:

> "* * * question in the case of applicants who claim citizenship by reason of being sons or daughters of an American citizen is the question of paternity."

Therefore, the sole issue left for the determination of the trial Court in this particular matter is whether the appellant is the son of a recognized United States citizen. This relationship was the sole issue in *Quan Toon Jung v. Bonham,* 119 F. 2d 915, 916.

Also see *Yep Suey Wing v. Berkshire,* 73 F.2d 745, 746.

Once the relationship of the appellant to the said Chow Yit Quong, a recognized United States citizen, has been established by evidence of record, the appellant must be deemed to have acquired United States citizenship in accordance with the provisions of that Statute. The claim to United States citizenship having been established, the appellant is entitled to a declaratory judgment of United States nationality.

Acheson v. Yee King Gee, 184 F.2d 382;
Wong Gan Chee v. Acheson, 95 F.Supp. 815;
Toy Teung Kwong v. Acheson, 95 F.Supp. 745.

The Court below in giving judgment against this appellant filed no opinion, but set forth in its memorandum order for judgment (T. 21) that the evidence presented by the appellant did not conform to the standards enunciated in the opinion filed the same day by the same Judge in the case of *Ly Shew v. Acheson,* 110 Fed. Supp. 50.

We submit that the principles laid down by the lower Court in the *Ly Shew* decision, supra, are contradictory to the normal degree of proof required in proceedings of this nature. It is a generally recognized rule of law that in civil cases the party having the burden of proof must establish the ultimate facts by a preponderance of the evidence. As was stated by the Court in *Ex parte Cheung Tung,* D.C., Wash., 292 F. 997, 1000:

> "For the officers to require more conclusive evidence than the petitioner has furnished is to demand proof beyond all doubt and to a moral

certainty, and such requirement would constitute a fundamental error in the application of the law."

See:

Ex parte Delaney, 77 F. Supp. 312, 322, affirmed 9 Cir., 170 F. 2d 239.

It is asserted that it is not necessary that the appellant's evidence be uncontradicted, nor that the evidence most favorable to his contention carry conviction beyond a reasonable doubt. The quantum of evidence, in whose favor it preponderates, shall be determinative as to whether the evidence sustains the burden of proof.

See:

Lilienthal's Tobacco v. United States, 97 U.S. 237, 24 L. Ed. 901, 905.

We do contend most earnestly that where, as here, there is positive testimony as to the existence of the asserted relationship, a decision adverse to the claimant can not be supported. We believe that the appellant established the claimed relationship by more than a fair preponderance of the evidence. The appellant identified himself by direct and positive evidence as the lawful son of a United States citizen, and as such lawful son he is legally entitled to recognition by this Court. Chow Yit Quong (father of the appellant) testified that he married Wong Suey Hong in China in 1917; that his wife, Wong Suey Hong, died in China in 1943; that his son, Chow Sam who is now

29 years of age was admitted to the United States in 1940; that his son, Chow Sam, was present in the courtroom at the time of trial of these proceedings (T. 43); that his son, Chow Hing, was also admitted to the United States in 1940 but is presently serving in the United States Army (T. 43); and that his son, Chow Sing (the present appellant) was born at Canton City, China on August 23, 1934 (T. 44).

This witness, Chow Yit Quong, stated that he was present at the time of the birth of his son, the appellant; that he has seen his son, Chow Sing, often enough during the intervening years to clearly recognize him as his son (T. 57); that he lived with this boy in China from the time of his birth until the time of his return to the United States in 1939 (T. 44). That he lived with the appellant during his trip to China in 1940, and on his subsequent return to China from early 1947 to 1950; that his wife, Song Suey Hong, was the mother of Chow Sing (T. 51). It was further stated that this appellant always lived with the witness during his trips to China; that he and the appellant always slept in the same house; that they ate their meals together; that he consistently claimed throughout the years a son named Chow Sing; that the person in the courtroom is the same Chow Sing that he has consistently claimed throughout the years, and that the said Chow Sing is his lawful blood son (T. 51 et seq.).

The appellant, Chow Sing, testified that he is presently residing with his father; that they have the same

sleeping accommodations (T. 101); that immediately prior to coming to the United States he resided with his father in China (T. 102 and 105); that they lived together in the same house; that they had their meals together; that the said Chow Yit Quong always treated the appellant as his son, and that he always identified and introduced Chow Yit Quong to his friends as his father (T. 106); that he has a brother by the name of Chow Sam; that this brother, Chow Sam, was present in the courtroom; and that he and Chow Yit Quong have always spoken to each other as father and son (T. 106).

The Government stipulated that the witness, Chow Sam, was admitted to the United States as a citizen and that such admission was based upon his relationship to Chow Yit Quong (T. 136). This witness, Chow Sam, testified that his father is Chow Yit Quong, who was present in the courtroom; that his mother was Wong Suey Hong; that he has a brother by the name of Chow Sing who was born in Canton City and who is presently 18 years of age; that he lived with the said Chow Sing in China for approximately 6 or 7 years; that he and the said Chow Sing resided together in the same house, had their meals together, slept together, and that they have always spoken to and introduced each other as brothers (T. 136 et seq.). This witness further testified that Chow Sing was the son of his mother, Wong Suey Hong, and his father, Chow Yit Quong (T. 138). This witness also identified the boy whose picture appeared in Exhibit 2 as his brother, Chow Sing, the present appellant (T. 144).

A disinterested witness, So Tak, testified that during a temporary trip to China in 1947, he met the appellant, Chow Sing, in the home of Chow Yit Quong (T. 93 and 96); that the Chow Sing who was present in the courtroom is the same boy that he met in Canton City in 1947 (T. 95); that while he was in Canton City during his trip to China in 1947, he visited the home of Chow Yit Quong every day; that the said Chow Yit Quong introduced Chow Sing to him as his son (T. 96); that Chow Yit Quong and Chow Sing were living together in the same home as father and son.

Plaintiff's exhibits 3, 4, 5, 6 and 7 establish a consistent claim over a long number of years by Chow Yit Quong that he had a son identified as Chow Sing. Plaintiff's exhibit 8 was a photograph taken at the time of the marriage of the witness, So Tak, in Canton City, China in 1947. The appellant, his father, Chow Yit Quong, and the witness all appear in that picture. Plaintiff's exhibit 1 is a photograph that Chow Yit Quong had taken in China prior to his last return to the United States. Chow Yit Quong identified the persons appearing in that photograph as himself, his son Chow Sing, a god-daughter, his second wife and a son by his second marriage (T. 47). The appellant, Chow Sing, likewise identified these individuals in the same manner (T. 103).

Exhibit B shows the efforts of Chow Yit Quong to bring the appellant to the United States as his lawful son since September 17, 1946 (T. 111).

In accordance with an earlier Court Order, the appellant and his father, Chow Yit Quong, submitted to blood grouping examinations. It was stipulated that such examinations conducted by the Government show compatible blood groupings (T. 56).

The foregoing was the testimony and evidence offered in behalf of this appellant. The appellee offered no evidence whatsoever other than the prior immigration proceedings which were admitted into evidence for a limited purpose and directed only to those special questions and answers which were set forth in the interrogatories and denied in the answer to the interrogatories (T. 151).

The foregoing evidence clearly manifests the existence of the claimed relationship of father and son. This pedigree evidence is more than sufficient to sustain the issue it covers. Such testimony is entitled to consideration in arriving at a decision in this matter.

This Court has previously stated:

> "He took the stand and testified in his own belief concerning his place of birth. This evidence of course was hearsay, but nevertheless, it is the type of hearsay which is permitted. U. S. v. Wong Gong (C.C.A.), 70 F2d 107."
>
> *Lee Hin v. United States,* 74 F.2d 172, 173.

It was stated by Judge Wilbur in the case of *Gung You v. Nagle,* 34 F.2d 848, at page 852:

> "Relationship is not usually proven by physical facts, and never is where the mother does not testify, but by pedigree, reputation in the family and

by the conduct of the parties, including the manner in which they live. The fact that a small child lives in the home of its alleged parents and that they maintain toward each other the obligation involved in the relationship is evidence favorable to the issue, and evidence that they did not live together and did not conduct themselves as parent and child is evidence to the contrary. Such evidence is not collateral evidence, it is direct and material evidence on the issue."

The present type of action is a judicial litigation where there are two parties, the proponent and the opponent. It is elementary that if the proponent makes out a prima facie case, not one of moral certainty or beyond a reasonable doubt, but sufficient to support his allegations, then the burden of evidence shifts to the opponent to answer it. If the opponent does nothing about it, he fails and the proponent succeeds.

"Whenever litigation exists somebody must go on with it; the plaintiff is the first to begin; if he does nothing he fails. If he makes out a prima facie case and nothing is done to answer it, the defendant fails."

Jones on Evidence, 2nd Edition, Section 176.

"Prima facie evidence is a minimum quantity. It is that which is enough to raise a presumption of fact; or again, it is that which is sufficient when unrebutted, to establish the fact."

Otis & Co. v. Securities & Exchange Comm., 176 F.2d 34.

The appellant introduced for the Court's consideration the best available evidence. This evidence presented was stronger than that necessary to establish a prima facie showing of the claimed relationship, and unless this affirmative showing is rebutted it is sufficient to warrant judgment in appellant's favor.

When no contradictory evidence is offered, unsupported allegations are not sufficient to overcome the prima facie showing.

Wong Gam Chong v. United States, 111 F. 2d 707;

Leong Kwai Yin v. United States, 9 Cir., 31 F. 2d 738;

Fong Lum Kwai v. United States, 9 Cir., 49 F. 2d 19;

Lee Choy v. United States, 9 Cir., 49 F. 2d 24.

What evidence or proof then, if any, was offered by the appellee to offset and controvert this positive and affirmative showing by the appellant. No evidence was submitted which was of an affirmative nature. The appellee relied upon a few minor discrepancies which developed at the time of the prior administrative hearing. In view of the appellant's age at the time of the occurrence of these events, it was not surprising that he was unable to answer in minute detail some of the questions propounded. Even admitting that such minor discrepancies do exist, it is asserted that under the settled principles heretofore mentioned, the findings of the Court below adverse to the claim of the appellant are clearly erroneous within the meaning of Rule

52(a) of the Federal Rules of Civil Procedure. The Court can not wholly disregard without sufficient reason the evidence offered by the appellant and his witnesses to establish his claim to United States citizenship.

See:

Wong Kam Chong v. United States, 111 F. 2d 707, 712;

Lau Hu Yuen v. United States, 9 Cir., 85 F. 2d, 327.

Likewise, any slight discrepancy should be completely disregarded.

See:

Young Lee Gee v. Nagle, 53 F. 2d 448.

Jung Yen Loy v. Cahill, 81 F. 2d 809, 813.

It was stated by the Court of Appeals for the First Circuit in *Ward v. Flynn,* 74 F. 2d. 145, at page 146:

> "* * * to reject sworn, consistent, unimpeached and uncontradicted testimony, there must be a real reason which would be regarded as adequate by fair minded persons."

The decision of the lower Court in the *Ly Shew* case, supra, was one of the first written opinions concerning the quantum of evidence necessary to establish United States nationality under the provisions of 8 U.S.C.A. 903. Prior to such opinion, many favorable judgments were entered in other Courts upon the basis of the preponderance of evidence rule. Similar rulings have even been obtained subsequent to the decision of the Court in this particular matter.

See:

Lee Mon Hong v. McGranery, 110 F. Supp. 682;
Gee Leung v. Acheson, USDC, Southern Dist., Calif., N. D., unreported, decided May 20, 1953.

Upon conclusion of the trial, after submission of the evidence and closing arguments of counsel, Judge Goodman stated:

> "Now, Mr. Hertogs, my feeling in the matter is, and it is just a sort of an intuitive feeling—I'm inclined to think that maybe this boy is the son." (T. 177.)

Even though the Court expressed its opinion that this boy could be the son of his alleged father, his claim was denied in the face of no countervailing evidence. It was a decision of this nature that gave rise to the prior expression of this Court in regard to the phrase "a Chinaman's chance".

See:

Yuen Boo Ming v. United States, 103 F. 2d 355, 358.

Certainly the summary rejection of this appellant's claim of United States citizenship, based on speculation, conjecture and unsupported allegations, is contrary to the weight of the evidence. Even though this Court has not previously considered and ruled upon the particular question here presented, it has over a long period of time dealt with a similar situation where administrative decisions of the Immigration and Naturalization Service were under attack in ha-

beas corpus proceedings. In those cases, the power of the Court to review the decisions of the administrative body was distinctly restricted compared with the latitude here. However, we submit that principles laid down by this Court in that type of case are pertinent and should be given consideration.

In *Go Lun v. Nagle,* 22 F. 2d 246, 248, with regard to such a review this Court said:

> "We fully appreciate the narrow limits of the jurisdiction of the courts on habeas corpus proceedings to review decisions of the immigration tribunals; but 'the error of an administrative tribunal may, of course, be so flagrant as to convince a court that the hearing had was not a fair one'. Tisi v. Tod, 264 U. S. 131, 44 S. Ct. 260, 68 L.Ed. 590. Such a case is presented here.
>
> "A reading of the entire testimony of the three witnesses leaves not the slightest room for doubt that their relationship was fully established, and that the appellant is a citizen of the United States. A contrary conclusion is arbitrary and capricious and without any support in the testimony.
>
> "In *Johnson v. Damon* (CCA) 16 F. 2d 65, the court considered discrepancies on which an excluding decision was based, more important than any disclosed by the present record and in reference to the excluding decision said 'The mind revolts against such methods of dealing with vital human rights.' That language might well be applied here."

The case of *Johnson v. Damon,* supra, from which this Court quoted the forceful language just men-

tioned, involved two Chinese boys who sought entry as sons of a citizen who died when they were infants. Their testimony was supported by that of a previously admitted brother and an uncle. The evidence, therefore, was basically similar to that in the case at bar, but somewhat weaker. Despite the statutory limitations upon the power of the Court to review the administrative decision, the Court in that case was impelled to overturn that decision in the forceful language quoted by this Court in the *Go Lun* case, supra.

In speaking of the rejection by administrative tribunals of uncontradicted and unimpeached testimony by the appellant and his alleged relatives in *Gung You v. Nagle,* 34 F. 2d 848, 852, this Court said:

> "The mere hearing of witnesses by an officer is of no avail to a party, if the evidence of competent witnesses is to be entirely disregarded and findings made in the teeth of the testimony of one or a dozen such witnesses, either because of a fixed policy, to *give a weight to a presumption of law far beyond the legislative intent,* or because of a policy calculated to entrap the witness * * * ." (Italics added.)

In conclusion, this Court held that the rejection of the evidence of the several witnesses was purely arbitrary.

See also:

Quan Toon Jung v. Bonham, (C. A. 9) 119 F. 2d 915;

Wong Tsick Wye et al. v. Nagle, (C. A. 9) 33 F. 2d 226.

In *Chun Kwock Quan v. Proctor,* 92 F. 2d 326, this Court has extensively reviewed the well established principles applicable to judicial review of *administrative* findings in Chinese citizenship cases. In that case the Court points out that such findings must have some factual support in the record, that suspicion may not take the place of actual evidence, that evidence may not be disregarded because of a belief that frauds may have been committed by other Chinese in other cases, and that it is the province of the Courts, in proceedings for review of decisions of the immigration officials, to prevent abuse of the statutory power wielded by them.

It seems obvious that an administrative finding of fact adverse to the appellants would not withstand even the limited review afforded on habeas corpus proceedings, under the foregoing decisions and many others to the same effect. Moreover, it is plain under the authorities hereinbefore cited that the power of appellate review of findings of fact under Rule 52(a) of the Federal Rules of Civil Procedure is even *broader* than it is in the case of administrative findings which carry statutory finality. Consequently, we submit that the findings of the Court below are "clearly erroneous" within the meaning of Rule 52(a) of the Federal Rules of Civil Procedure.

This Court has further held that in such proceedings the evidence must be weighed in the light of the defendant's ability to produce evidence (Lee Hin v. United States, (C. A. 9) 74 F. 2d 172), that such evi-

dence cannot be rejected because the witnesses are Chinese (*Yee Chung v. United States* (C. A. 9) 243 F. 126, 130; *Lau Hu Yuen v. United States* (C. A. 9) 85 F. 2d 327, 330) and that the requirement of former Sec. 284, Title 8, U.S.C.A. that citizenship of a Chinese person must be proved "to the satisfaction of" the Judge or Commissioner "means nothing more than that the proofs must be sufficient to satisfy reasonable judicial standards". (*Ching Hong Yuk v. United States* (C. A. 9) 23 F. 2d 174, 175.)

We submit that the foregoing principles enunciated by this Court in reviewing administrative decisions and judgments in judicial deportation proceedings are applicable here by analogy.

Applying these principles, it must be concluded that the decision of the lower Court is erroneous.

The Court below erred in concluding that the appellant did not have a claim of permanent residence in the Northern District of California. With regard to the first finding of fact, we would point out additionally that the allegation in the complaint (T. 4) that appellant claims permanent residence within the Northern District of California constituted sufficient basis for invoking the jurisdiction of the Court under 8 U.S.C., Sec. 903, supra. (*Acheson v. Yee King Gee,* 184 F. 2d 382; *Look Yun Lin v. Acheson,* 87 F. Supp. 463). This particular finding does not go to the merits of the case, and since the statute permits the claimant to sue in the "District of Columbia *or in the district in which such person claims a permanent residence*"

(italics added) obviously it was intended to permit the claimant to choose the forum. Apparently the first finding of the Court below is merely ancillary to the further finding that appellant had failed to prove that he is the child of Chow Yit Quong, and the latter finding, we submit, cannot stand for the reasons heretofore discussed.

SUMMARY.

For the reasons and authorities herein discussed, we submit that the Court below erred in holding that the appellant failed to establish his claim to United States nationality. We submit that the rejection of the positive and affirmative evidence in this case was clearly erroneous. Moreover, that suspicion as pronounced in the lower Court's decision in the *Ly Shew* case, supra, is insufficient to support such a finding of fact.

Wong Gook Chun v. Proctor, (C. A. 9) 84 F. 2d 763, 765;

Tillinghast v. Wong Wing (C. A. 1), 33 F. 2d 290.

As a matter of fact, the remarks of the trial Court (T. 177) indicate that the Court did believe the appellant to be the person whom he claimed, but that judgment could not be granted because the evidence did not meet that standard required as expressed in his opinion.

It is asserted that the issue of the relationship of the appellant to his United States citizen father was

to be litigated under the principles and standards applicable generally to other causes of action arising under Federal Law. If the relationship existed, as indicated by the Court, then under the United States statutes which were in effect at the time of his birth he must be deemed to have acquired United States citizenship at the time of birth. It was the power and the duty of the Court under such circumstances then to simply declare by appropriate decree that such citizenship existed. The evidence produced by the appellant was sufficient to establish the existence of the relationship under "reasonable judicial standards". (Chin Hong Yuk v. United States (C. A. 9) 23 F. 2d 174). American citizenship is a most precious right. Its denial should not be allowed to rest upon a doubtful premise. *Machado v. McGrath,* 193 F. 2d 706, Cert. Den. 72 S.Ct. 557.

CONCLUSION.

We submit that the findings of the Court below are "clearly erroneous", and that the judgment should be reversed.

Dated, San Francisco, California,
June 29, 1953.

JACKSON & HERTOGS,
JOSEPH S. HERTOGS,
Attorneys for Appellant.